



FREEDOM OF EXPRESSION AND THE PRESS IN CANADA

CASES AND MATERIALS
(Second Edition 1990-1991)

VOLUME III

M. David Lepofsky
Counsel, Constitutional Law
Ministry of the Attorney General
for Ontario

Jamie Cameron
Associate Professor
Osgoode Hall Law School
York University

Christopher Bredt
Director, Constitutional Policy
Ministry of the Attorney General
for Ontario

c Copyright 1990

182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200

45-743-395

BORA LASKIN LAW LIBRARY

SEP 23 1991

FACULTY OF LAW
UNIVERSITY OF TORONTO

FREEDOM OF EXPRESSION AND THE PRESS IN CANADA

CASES AND MATERIALS
(Second Edition 1990-1991)

VOLUME III

M. David Lepofsky
Counsel, Constitutional Law
Ministry of the Attorney General
for Ontario

Jamie Cameron
Associate Professor
Osgoode Hall Law School
York University

Christopher Bredt
Director, Constitutional Policy
Ministry of the Attorney General
for Ontario

c Copyright 1990



Printed on
Recycled Paper

TABLE OF CONTENTS

VOLUME 1

	<u>page</u>
INTRODUCTION	i
CANADIAN CHARTER OF RIGHTS AND FREEDOMS	vii
CHAPTER I: BASIC PRINCIPLES OF CHARTER INTERPRETATION	1
CHAPTER II: PURPOSES AND FUNCTIONS OF FREEDOM OF EXPRESSION	24
CHAPTER III: PRE-CHARTER CONSTITUTIONAL PROTECTION FOR FREEDOM OF EXPRESSION IN CANADA	68
CHAPTER IV: THE FREE SPEECH AND PRESS CLAUSES OF THE U.S. CONSTITUTION	77
CHAPTER V: THE SCOPE OF FREEDOM OF EXPRESSION UNDER THE CHARTER	123
CHAPTER VI: SUBVERSIVE AND UNPATRIOTIC SPEECH	179
CHAPTER VII: FREEDOM OF EXPRESSION AND NATIONAL SECURITY	214
CHAPTER VIII: FALSE AND DEFAMATORY SPEECH	224
CHAPTER IX: HATE PROPAGANDA	268

TABLE OF CONTENTS


VOLUME 2

	<u>page</u>
CHAPTER X: OBSCENITY AND PORNOGRAPHY	1
CHAPTER XI: COMMERCIAL EXPRESSION	71
CHAPTER XII: THE VENUE OF EXPRESSION -- THE PUBLIC FORUM	138
CHAPTER XIII: INTRODUCTION TO GOVERNMENT REGULATION OF THE MEDIA	179
CHAPTER XIV: CONSTITUTIONALITY OF THE REGULATION OF OWNERSHIP AND CONTENT OF BROADCAST MEDIA	216
CHAPTER XV: MEDIA INFRINGEMENTS OF FREEDOM OF EXPRESSION	267
CHAPTER XVI: THE RIGHT TO ATTEND JUDICIAL PROCEEDINGS	288
CHAPTER XVII: THE RIGHT TO SPEAK AND PUBLISH ABOUT COURT PROCEEDINGS	341
CHAPTER XVIII: THE RIGHT TO CRITICIZE COURTS	385
CHAPTER XIX: MEDIA RIGHTS REGARDING THE GATHERING OF NEWS	420

TABLE OF CONTENTS

VOLUME 3

	<u>page</u>
CHAPTER XX: POLITICAL EXPRESSION AND THE ELECTORAL PROCESS	1
CHAPTER XXI: POLITICAL ACTIVITY BY PUBLIC SERVANTS	48
CHAPTER XXII: COMPELLED EXPRESSION	70
CHAPTER XXIII: HATE PROPAGANDA: THE SUPREME COURT DECISIONS	125



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/freedomofexpress03lepo_2

CHAPTER XX

POLITICAL EXPRESSION AND THE ELECTORAL PROCESS

	<u>page</u>
1. INTRODUCTION	2
2. REGULATING CAMPAIGN EXPENDITURES AND CONTRIBUTIONS	3
<u>(a) The U.S. Position:</u>	3
<u>Buckley v. Valeo</u> 424 U.S. 1 (1976).	3
Notes and questions	13
<u>Bellotti v. Baird</u> 435 U.S. 765 (1978).	13
Notes and questions	18
<u>Austin v. Michigan Chamber of Commerce</u> 495 U.S. --- (1990).	19
Notes and questions	36
<u>(b) The Canadian Position:</u>	37
<u>N.C.C. v. A.-G. Canada</u> , [1984] 5 W.W.R. 436.	37
Notes and questions	40
<u>Lavigne v. O.P.S.E.U.</u> (1989), 56 D.L.R. (4th) 474 (Ont. C.A.).	42
Notes and questions	44
3. REGULATING EXPRESSION DURING ELECTION CAMPAIGNS	45
<u>Mills v. State of Alabama</u> , 86 S.Ct. 1434 (1966).	45
Notes and questions	46

CHAPTER XXI

POLITICAL ACTIVITY BY PUBLIC SERVANTS

	<u>page</u>
1. INTRODUCTION	49
2. THE CANADIAN POSITION APART FROM THE CHARTER	50
<u>Fraser v. P.S.S.R.B.</u> , [1985] 2 S.C.R. 455.	50
3. THE CANADIAN POSITION UNDER THE CHARTER	53
<u>O.P.S.E.U. v. A.-G. of Ontario</u> (1988), 65 O.R. (2d) (H.C.J.).	53
Notes and Questions	63
<u>Osborne v. The Queen</u> (1988), 52 D.L.R. (2d) 241 (Fed. C.A.).	64
Notes and Questions	69

CHAPTER XXII
COMPELLED EXPRESSION

	<u>page</u>
1. INTRODUCTION	71
2. THE CANADIAN POSITION	71
<u>Slaight Communications Inc. v. Davidson</u> , [1989] 1 S.C.R. 1038.	71
Notes and Questions	84
3. THE AMERICAN POSITION	85
<u>West Virginia State Board of Education v. Barnette</u> 319 U.S. 624 (1943).	85
Notes and Questions	98
<u>Wooley v. Maynard</u> 430 U.S. 705 (1977).	98
Notes and Questions	103
<u>Meese v. Keene</u> 107 S.Ct. 1862 (1987).	103
<u>Keller v. State Bar Of California</u> 110 S.Ct. 2228 (1990).	117
Notes and Questions	124

CHAPTER XXIII

HATE PROPAGANDA: THE SUPREME COURT DECISIONS

	<u>page</u>
<u>R. v. Keegstra</u> , unreported judgment of the Supreme Court of Canada, December 13, 1990.	126
<u>Canada (Human Rights Commission) v. Taylor</u> , unreported judgment of the Supreme Court of Canada, December 13, 1990.	218

